

A-72

A-101-L

LETTER

60-42-L

H.B. DANIELS

I Concur

WADE CHURCH

I Concur

NEWMAN WHITE

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

March 7, 1960

Mr. Alfred Duncan, Secretary
State Board of Pharmacy
1028 E. McDowell Road
Phoenix, Arizona

Dear Sir:

This is in reply to the two questions presented to us for review and answer. Your questions are:

"Shall we file this list (list of approved school or college of pharmacy) with the Secretary of State, and

When is the effective date of this list?"

In solving the first question presented, we must first face these issues:

1. May the board make such a proposed list?
2. Is this list tantamount to a rule?

In A.R.S. § 32-1904(1) the board is given authority to make rules and regulations pertinent to the practice of pharmacy and the legal performance of the duties of the board. Also, under A.R.S. § 32-1922 the board is authorized to recognize "school or college of pharmacy or department of pharmacy of a university * * *"

Reading the two Acts together, it is plainly evident that the board has power to make the proposed list of recognized schools or colleges of pharmacy.

Now, comes this question: Is this list tantamount to a "rule" as defined by A.R.S. § 41-1001(3)? This section reads:

"§ 41-1001. Definitions

In this article, unless the context otherwise requires:

* * *

Mr. Alfred Duncan, Secretary
State Board of Pharmacy

March 7, 1960
Page Two

3. 'Rule' includes every regulation, standard or statement of policy or interpretation of general application and future effect * * * to implement or make specific the law enforced or administered by it * * *

Doubtless, the proposed list will be used as a "statement of policy" and it is made to "implement" A.R.S. § 32-1922 and make it "specific". It will have "future effect". In short, it is a "rule" as defined by A.R.S. § 32-1922, supra.

The answer to our general question, must the list be filed with the Secretary of State, is obvious. Since the proposed list of colleges and schools of pharmacy is a rule under the law, it then must comply with the terms and conditions of Article 1, Chapter 6, Title 41. Specifically, it must conform to the provisions of A.R.S. § 41-1004. In summary, it must be filed with the Secretary of State.

We have concluded that the list is a "rule" under the law, and must be filed with the Secretary of State, when it does take effect.

In solving this problem, we address ourselves to the language of A.R.S. § 41-1005. It reads:

"No rule adopted or promulgated by an agency shall become effective until a certified copy thereof has been filed in the office of the secretary of state, unless:

1. Otherwise specifically provided by statute pursuant to which the rule was adopted, in which event it becomes effective on the day prescribed by the statute.

2. A later date is prescribed by the state agency in a written instrument filed with or as a part of the rule."

This statute is self-explanatory. We cannot improve upon its directness and clarity.

We hope that the information presented in this letter is of benefit and service to you in the resolution of your

W-422

Mr. Alfred Duncan, Secretary
State Board of Pharmacy

March 7, 1960
Page Three

problem. If this office can be of further assistance to
you, please advise us.

Very truly yours,

WADE CHURCH
The Attorney General

H. B. DANIELS
Assistant Attorney General

HED:c

60-42-L